IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16869 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARESH MAFATLAL MAKWANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16869 of 2003

MS PP LAHERI for Petitioner No. 1

Mr. AD Oza. GP for Respondent No. 1-3

NOTICE SERVED BY DS for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 18/12/2004

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner one of the allottees of Akshay Apartment situate at Ward No.2, Gandhidham, whose flat has been collapsed in Earthquake occurred on 26th January 2001 and there was complete destruction of

the petitioner's flat, has challenged the legality and validity of the order passed by the Deputy Collector (Earthquake), Gandhidham, dated 30th May 2002 by which the Deputy Collector (Earthquake), Gandhidham has rejected the application of the petitioner for getting necessary compensation due to collapse or destruction of his flat in Akshay Apartment.

2. Ms. PP Laheri, learned advocate appearing on behalf of the petitioner has submitted that the petitioner had produced all the necessary documents to prove his ownership and/or possession of the flat in question as on 26.1.2001 and/or prior thereto and inspite of that the Deputy Collector has rejected the application of the petitioner for compensation mainly on the grounds that ;

(1) The petitioner has not produced any evidence with regard to occupation of the flat in question;

(2) It is not established that the petitioner was the legal owner/in possession of the flat in question; and

(3) There is no evidence with regard to having GEB light connection of the flat in question.

Relying on various documents, such as Government Resolutions dated 23rd February 2001, 30th August 2001, and also 23rd August 2001 Ms. Laheri has submitted that the impugned order passed by the Deputy Collector (Earthquake) is even contrary to the said Government Resolutions. It is submitted that it is not necessary that even if a person is owner and/or in occupation of a flat in question for the purpose of getting possession he must be in occupation of a flat at the time of collapse of a flat. It is submitted that, that is not the prerequisite condition and/or requirement for getting the compensation. It is also further submitted that even for the purpose of getting compensation due to collapse/destruction of a flat, there is no prerequisite that there must be a GEB light connection. It is submitted that there might be number of reasons for remaining not in occupation of a flat in question at the relevant time and/or there might be so many reasons for not having the GEB connection. It is submitted, that what is required for the purpose of getting compensation is that there should have been damage caused to the property and nothing more than that. It is also further

submitted that as such the building in question was categorised as G-5 category and therefore the petitioner is entitled to compensation due to collapse and/or destruction of the flat in question. She has further submitted that in fact number of documents have been produced which tally with the certificate issued by the Nagarpalika/Municipality and the same tallies with the certificates and documents issued by other authorities. Therefore, it is denied by her that the petitioner has failed to produce any document with regard to ownership/possession of the flat in question.

3. Shri AD Oza, learned Government Pleader appears on behalf of the respondents. It is submitted that as the petitioner has not produced any documentary evidence to prove his ownership/possession prior to January 26, 2001 the petitioner is not entitled to compensation and therefore the impugned order is rightly passed. It is also further submitted by him that in fact the petitioner has an alternative remedy available by way of either approaching the Ombudsman/Lokpal, i.e., District Judge, Kuchchh-Bhuj and/or the Gujarat State Disaster Management Authority which is the highest authority to decide such types of disputes.

4. Heard the learned advocates appearing on behalf of the parties. Considering the Government Circulars dated 23rd February 2001, 30th August 2001 and 23rd August 2001 and the policy of the State Government, the intention of the State Government is to award compensation to a person who is affected due to collapse and/or destruction of his property. What is required to be considered is whether in the Earthquake occurred on 26th January 2001 the property of a person is damaged or not. There are no further requirements. There might be number of reasons due to which a person may not be in occupation of the property in question, though he might be the lawful owner and/or in possession of the property in question which has collapsed, damaged or destroyed. There might be so many factors for not having electricity connection. That by itself is not a ground to deny compensation to a person whose property is collapsed and/or damaged. The only requirement is that he must be the owner of the property in question. The only exception is that if a person is having more than one property and if one or all the properties are damaged or collapsed, then that person is entitled to compensation only for one property. Except this, there is no other requirement and/or exception. Under the circumstances, the reasoning given by the Deputy Collector (Earthquake) in his order dated 30th May 2002, more particularly the

Reasonings No. 1 and 3, that there is no evidence that the petitioner was residing in the flat in question at the time when the Earthquake took place and that there is no evidence to the effect that GEB light connection was there or not are absolutely illegal and contrary to the aforesaid circulars and policy of the State Government. The Deputy Collector (Earthquake), Gandhidham, could not have rejected the application of the petitioner with regard to compensation on the aforesaid 2 grounds. So far as the question of legal ownership and possession of the flat in question is concerned, it is the case of the petitioner that the petitioner has produced all the necessary documents to prove the ownership and possession of the petitioner of the flat in question which is disputed by the learned Government Pleader, and relying upon reason No.2 in the impugned order dated 30th May 2002, Shri AD Oza has submitted that these are all disputed questions of facts which are not normally required to be considered in a petition under Article 226 of the Constitution of India.

5. Considering the aforesaid facts and circumstances, the question with regard to ownership and possession of the petitioner of the flat in question prior to 26th January 2001 is required to be considered by the appropriate authority. In the present case, Gujarat State Disaster Management Authority is the highest authority in the State of Gujarat to consider such type of questions with regard to payment of compensation to a person who is affected due to earthquake. Under the circumstances, the respondent No.4 Secretary, Gujarat State Disaster Management Authority is directed to consider the question of ownership and possession of the petitioner of the flat in question as on and/or prior to 26th January 2001 within the period of four weeks from the date of receipt of certified copy of this order. Ms. PP Laheri, ld. advocate for the petitioner has submitted that this petition itself be treated as a representation as according to her all the necessary documents to prove that the petitioner is the owner and/or in possession as on and/or prior to 26th January 2001 are already annexed with the petition. The petitioner is therefore directed to produce a copy of this petition along with certified copy of this order along with the Government Circulars/Resolutions upon which reliance has been placed by the petitioner and/or any other material/evidence which the petitioner wants to produce, before the respondent No.4 immediately and on receipt of the same the respondent No.4, Secretary, Gujarat State Disaster Management Authority is directed to consider the question whether the petitioner is

entitled to the compensation or not.

6. It goes without saying that now except the question with regard to ownership and possession, nothing further is required to be considered by the authority as the Deputy Collector (Earthquake) in his order dated 30th May 2002 has rejected the application on 3 grounds namely that (1) the petitioner is not in possession of the flat in question; (2) necessary evidence with regard to ownership and possession is not produced; and (3) that there is no evidence to show that GEB light connection was there or not. This Court, as stated hereinabove, has held that it is not necessary that a person must be in occupation of the property in question as on 26th January 2001 and/or that there should have been a GEB connection. The only thing which is required to be considered is whether a person is the owner and/or in possession of the property in question or not.

7. In the facts and circumstances, the respondent No.4 is directed to consider the case in light of the observation and direction of this Court and if ultimately it is found that the petitioner is entitled to compensation the respondent No.4 is directed to see that the amount of compensation is paid to the petitioner as early as possible, but not later than 4 weeks from the date of passing of such order. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

[M.R. Shah, J.]

rmr.